

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>INDEPENDENT DISPATCH, INC</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action Case No. 05-10950 RWZ</b>
	)	
<b>v.</b>	)	
	)	
<b>F. C. MEYERS PACKAGING, LLC</b>	)	
	)	
<b>Defendant.</b>	)	

**ANSWER TO THE COUNTERCLAIM**

Plaintiff and Defendant-in-Counterclaim, Independent Dispatch, Inc. (“IDI”) Answers the Counterclaim as follows:

1. No response is required to paragraph 1 of the Counterclaim.
2. Admit
3. IDI is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the Counterclaim.
4. IDI admits that is Oregon corporation with a principal place of business as alleged, but denies that it simply arranges shipments for third parties. IDI operates as a federally licensed freight forwarder of general commodities and as a motor carrier.
5. Admit only that from time to time IDI offered specific rates and services to F.C. Meyers Packaging, LLC (FC Meyers).
6. Deny.
7. Deny that FC Meyer’s “engaged” IDI. FC Meyers choose to request service from IDI pursuant the rate proposals.

8. The Counterclaim contains no paragraph 8.
9. Admit only that a shipment was delivered to Phoenix, AZ rather than Pleasanton, CA, however deny that it was IDI that misrouted the shipment.
10. IDI is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 10 of the Counterclaim, however the arrangements between FC Meyer and its customer are immaterial, as it is undisputed that the shipment was delivered and in the possession of FC Meyer's customer, thus any claim for the full value of the shipment by FC Meyer or its customer cannot be made in good faith.
11. Deny.
12. Deny.
13. Deny.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff-in-counterclaim has failed to state a claim for which relief may be granted against IDI.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff-in-counterclaim's claim is preempted by the Carmack Amendment.

#### **THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, plaintiff has failed to join indispensable parties.

#### **FOURTH AFFIRMATIVE DEFENSE**

Whatever shipments were forwarded by IDI were accepted in accordance with and subject to all the terms and conditions of all applicable contracts, bills of lading, any applicable tariffs and classifications, and the rules set forth therein. IDI duly performed the terms and

conditions on its part to be performed. IDI claims the benefit of all defenses accorded it by those waybills and by all other applicable contracts under which the shipment traveled.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to present a claim and/or suit within the appropriate time limitations required by the contract of carriage.

**SIXTH AFFIRMATIVE DEFENSE**

The loss, if any, occurred as a result of an act or default of the shipper or its agent, without intervening action on the part of IDI.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent that plaintiff seeks recovery for special damages, Cargo Transit is not responsible.

**EIGHTH AFFIRMATIVE DEFENSE**

In the event that the plaintiff had not or has not any title or interest in the shipment the subject of this action, then the plaintiff is not the real party of interest herein and is not entitled to maintain this suit.

**NINTH AFFIRMATIVE DEFENSE**

Upon information and belief FC Meyers and/or its customer have failed to mitigate damages.

**TENTH AFFIRMATIVE DEFENSE**

Upon information and belief FC Meyer's customer is in actual possession of shipment, and has suffered no damages.

WHEREFORE, defendant Independent Dispatch, Inc. demands judgment dismissing the counterclaim and such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Liese Gallagher Howarth  
Liese Gallagher Howarth  
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Date: July 12, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2005, I electronically filed the foregoing Answer to the Counterclaim using the CM/ECF system which will send notification of such filing to:

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\_\_\_\_\_/s/ Liese G. Howarth\_\_\_\_\_  
Liese G. Howarth